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D. Bruce Prout
Christie, Parker & Hale
P.O. Box 7068
Pasadena, CA 91109-7068

In re Application of
LOB, Helke
Application No.: 09/623,840
PCT No.: PCT/EP99/01585
Int. Filing Date: 11 March 1999
Priority Date: 11 March 1998
Attorney Docket No.: 40265/DBP
For: MOTOR VEHICLE ACTUATING DEVICE

DECISION
ON PETITION
UNDER 37 CFR 1.181

This decision is in response to applicant's "Renewed Petition Under 37 CFR 1.181 to Withdraw Abandonment" filed 21 December 2001.

BACKGROUND

On 11 March 1999, applicant filed international application PCT/EP99/01585, which claimed a priority date of 11 March 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 16 September 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 30 September 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 11 September 2000.

On 08 September 2000, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and an unexecuted declaration.

On 18 October 2000, USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) was required.

On 28 September 2001, applicant filed the Petition to Withdraw Abandonment, and *inter alia*, a translation of the international application, the declaration of Helke Lob, the declarations of Alexander A. Martinez and Daniel G. Ferris and a copy of the docket page for this case.

On 05 November 2001, USPTO mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating, *inter alia*, that applicant failed to respond to the Notification of Missing Requirements mailed 18 October 2000.

On 12 December 2001, USPTO mailed a decision dismissing the 28 September 2001 petition without prejudice and setting a two month extendable time period for reply.

On 21 December 2001, applicant filed the instant "Renewed Petition Under 37 CFR 1.181 to Withdraw Abandonment," accompanied by, *inter alia*, a printout of the docket record for 28 November 2000 through 20 November 2001.

DISCUSSION

If applicant can establish nonreceipt of the NOTIFICATION OF MISSING REQUIREMENTS, then the application was never abandoned. In such case, the holding of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP § 711.03(c), para. I.

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Applicant has now met requirements (1), (2), and (3). As to (1), practitioner states, "Neither I nor any attorney of record in this case received the October 18, 2000 Notification of Missing Requirements until it was received by fax on September 28 [sic], 2001." As to (2), practitioner states, "I personally searched the file jacket and docket records and did not find the Notice of Missing Requirements dated October 18, 2000 except for the copy that was faxed on September 18, 2001, and the docket records indicate that the Notice was not received." As to (3), applicant has provided docket records for 18 November 2000 showing all cases for the practitioner's law firm that had a response due on that date.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is GRANTED.


The Notification of Abandonment (Form PCT/DO/EO/909) is VACATED.

This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing. The 35 U.S.C. §371 date of the application is 28 September 2001.

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

Handwritten signature of Erin M. Pender, with the initials "EMP" written above it.

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Handwritten signature of Boris Milef.

Boris Milef
Legal Examiner
PCT Legal Administration

Telephone: (703) 305-0455
Facsimile: (703) 308-6459